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“unable to form a wilful, deliberate and premeditated design to kill or of judging of his acts and their legitimate consequences ;” and in distinguishing between this state and the first lies the only difficulty. The method usually adopted by attorneys and sometimes also by judges, is by inquiring into the number of drinks taken. This, of course, can furnish no criterion whatever, as instances have been known of men who could drink until the stomach would retain no more and yet not be intoxicated, whilst a single dram may make others mad. The only safe rule is to take some well-established division, such as that of Hoffbauer, which we have followed above, and to permit no case which does not clearly fall within the second or third stages of drunkenness to receive extenuation, on the ground of incapacity to commit a crime of which *an intent to take life* is the essential and distinguishing characteristic.

J. H. LIND.

PHILADELPHIA, Pa.

RECENT AMERICAN DECISIONS.

Supreme Court of Vermont.

SAMUEL D. PENDAR v. GEORGE J. KELLEY.

Where a statute directs that any note or bill of exchange, “given for a patent right,” shall contain those words in the body thereof, and makes it a misdemeanor for any person to take a note for such consideration without the insertion of those words, the primary object of such statute is to enable the maker to defend for failure of consideration and to give notice to future holders of his right to do so.

Such a statute does not make the note itself illegal and void without those words, nor bring it within the rule that the infliction of a penalty upon an act makes it *per se* illegal and prevents it from being the foundation of a civil action.

Hence, when the maker of a note for such consideration omits to have the words inserted, the failure of consideration is no defence against an innocent holder for value.

ASSUMPSIT on a note in common form, made by the defendant in 1873, payable to Abell or order four months from date, and by Abell sold, and endorsed in blank to the plaintiff before due. The plaintiff bought it in good faith, without knowledge or notice of its consideration, paying something less than its face.

The county court gave judgment for the plaintiff for the sum he paid for the note, to which the defendant alleged exceptions. The note was given on the purchase by defendant of an interest in a patent for a spring bed-bottom. By a statute of 1870 it is a

misdeemeanor for any person to take a note for such a consideration, without the words, "given for a patent right," prominently and legibly inserted in the body of the note and above the signature, and a note with those words in it is subject to all defences, if transferred, to which it would be subject if owned by the original payee. The note was taken by Abell in violation of that statute. There was a total failure of consideration.

Allen, for defendant, claimed that the act of taking said note being a misdemeanor, punishable by fine, the note itself is as much illegal and void as if the statute in express terms had declared it to be so, and is so, even in the hands of an innocent holder for value.

Crane, for plaintiff.

The opinion of the court was delivered by

BARRETT, J.—We think the statute in question in this case was designed to enable the maker of any promise or obligation in writing for an interest in a patent right, to forefend himself against indefensible liability under the law merchant. It is left with him whether he will make the *salvo* of the statute available for his own protection or not. If he sees fit to give his negotiable paper in the commercial form, without the "stop-thief" warning in it, it is not for him to go back on some person who has lawfully and innocently dealt with the thief in respect to the paper just as if he was an honest man—the character in which the maker of the paper permitted him to appear with the paper for use and disposal, notwithstanding the maker had lawful opportunity and power to stamp his true character and the character of the paper on the face of the paper itself. The provision for a penalty against the person who shall take such paper without these words of warning in it, is not in like terms, nor on the same reason, as the statutes prohibiting gaming, the sale of intoxicating liquors, and the like, which declare void all contracts upon such consideration. In the present case, it is not criminal, "according to law," to sell an interest in a patent. It is not *criminal*, though generally it is intensely foolish, for unskilled men to buy such an interest, especially of the smooth-tongued, blandly impudent rascals who throng the country, and play "heathen chinee" upon rustic greed for money to be made by short cut, instead of being earned by plodding and honest industry in accustomed pursuits. It is not unlawful to give such

paper without the prescribed words inserted. The statute was not designed to reflect on the contract, or to affect the legal quality or usability of the paper. As between the maker and payee, and as between the maker and parties taking the paper overdue, or with notice of defective consideration, there was no need of the statute, unless for the purpose of having the note itself bear conclusive evidence of being subject to defence on the score of consideration. It is mainly to enable the maker to defend against the note when negotiated before due, that the insertion of the words of warning is required. The provision for the penalty was made in tender consideration of the fact (antagonistic to the maxim, that every one is presumed to know the law), that persons not knowing the law, might give notes without that clause inserted, unless the peril of the penalty should hold the swindler from taking such paper. The additional provision for redress by action points plainly to the view, that no other consequences than those expressed in the statute were to ensue upon the taking of such paper, without that clause inserted. The party to the sale of the patent who takes such paper is subjected to liability to the penalty, and to reimburse any damage accruing to the maker. The main, if not the only way, in which damage would seem likely to accrue to the maker would be by some innocent holder of it, when negotiated before due, enforcing payment from the maker. The immunity thus provided against the consequences of ignorance, heedlessness or recklessness, or even the foolishness of persons disposed to dabble in the purchase of interests in patent rights, seems to be the full extent intended by the legislature, and quite as much as that class of citizens can reasonably ask. The principle of the case of *Passumpsic Bank v. Goss*, 31 Vt. 315, and of many like cases before and since, is applicable in full force in the present case, as showing that the morality involved requires that the defendant should not be permitted to cast on the plaintiff, who is an innocent *bonâ fide* holder, the burden from which he might have protected both himself and the plaintiff, but for his own negligence in that behalf.

Judgment affirmed.

The decision in the above case seems most unquestionable. It has long been an elementary principle in the law of negotiable paper, that mere illegality in the consideration could not be urged as a defence against a *bonâ fide* holder

for value, and who derived title to the same while it was still current. There is indeed one exception to the rule, where the statute declares the note void in the hands of all persons to whom it shall come in the course of negotiation.

This is the case in the English and many of the American statutes against gaming and usury, and some others, at the present day : Story on Promissory Notes, §§ 191, 192, and notes.

The defect here seems to have been in the statute, which, of course, the courts could not supply. Very likely the statute could not have been obtained with the declaration that security given upon such consideration should be held void in all hands. For it must be confessed that there is great tenderness manifested towards that class of thieves and robbers, who name their ill-gotten gains by any species of speculation. There seems to be a kind of regret felt that such men should find their gains turning to ashes in their hands. Few men, comparatively, feel prepared to

condemn the dealing in any speculative commodities and to stamp them with the brand of illegality. This may account for the defect in the statute. But the decision is most unquestionable.

Statutes similar to the one referred to in the principal case (which we take to be the parent of the absurd brood) have been passed recently in several of the states, and are beginning to produce their inevitable crop of litigation ; but we believe the courts have uniformly given them the same construction—required alike by legal principles and common honesty—as in the foregoing opinion. See *Zimmerman v. Rote*, 75 Penna. St. 188 ; *Nebeker v. Cochran*, 14 Am. Law Reg. N. S. 697.

I. F. R.

Supreme Court of the United States.

MARY R. KOHL ET AL. v. THE UNITED STATES.

The right of eminent domain is inherent in all governments by virtue of their sovereignty. For all purposes required by the constitution, this right exists in the United States independently of any consent of the state in which the property lies.

Such state can neither control the right nor prescribe the mode of its exercise. Its consent is necessary, if at all, only for the transfer of exclusive jurisdiction and right of legislation after the land has been acquired.

Semble, A state has no power to condemn and take lands for the use of the United States. The correct mode is a proceeding by the United States directly.

The word purchase is technically large enough to include an acquisition by taking under the right of eminent domain, but as used in statutes generally, it means only an acquisition by contract between the parties without governmental interference. In connection, however, with the words “at private sale or by condemnation,” it includes the authority to take land by virtue of eminent domain.

A proceeding to take lands for public use, is a suit at common law within the language of the Judiciary Act of 1789, and where Congress has not prescribed any other tribunal, the Circuit Court has jurisdiction.

IN error to the Circuit Court of the United States for the Southern District of Ohio.

The opinion of the court was delivered by

STRONG, J.—It has not been seriously contended during the argument that the United States government is without power to appro-